



STATE OF NEW JERSEY

**FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION**

In the Matter of Michael Golub,
Department of Law and Public Safety

CSC Docket No. 2019-2523

Classification Appeal

ISSUED: August 16, 2019 (RE)

Michael Golub requests a retroactive appointment date as a Deputy Attorney General 3 effective January 6, 2018 with the Department of Law and Public Safety.

By way of background, the petitioner was approved to the unclassified title Deputy Attorney General 4 on March 25, 2013. The petitioner appealed the classification of his position, and completed and submitted to his supervisor a Position Classification Questionnaire (PCQ) on November 21, 2017. The petitioner's supervisor indicated to the petitioner on December 21, 2017 that he had signed the PCQ, and the petitioner claimed that he saw the Division Director sign it on December 22, 2017. On April 10, 2018, the petitioner contacted his appointing authority regarding the status of his appeal. On April 17, 2018, the appointing authority stated that it had not been received, and the petitioner resubmitted his appeal that day. The second PCQ was signed by the petitioner but he dated it November 21, 2017, by his supervisor and the Director on April 17, 2018, and by the appointing authority on May 30, 2018. The Division of Agency Services received the appeal on June 1, 2018 and issued a determination on February 19, 2019 that the classification of the petitioner's position was Deputy Attorney General 3, effective June 23, 2018.

In his request, the petitioner states that he submitted his completed PCQ to his supervisor on November 21, 2017. However, due to an administrative oversight, the appointing authority indicated to him that it did not receive it from the petitioner's Director, which required him to resubmit it. Although requested, the petitioner asserts that he has not received an explanation as to why or how it was

lost. Therefore, he states that the loss was negligence and he should not be penalized for this delay. He requests differential back pay to January 6, 2018.

It is noted that upon receipt of the petitioner's request, staff of this agency's Division of Appeals and Regulatory Affairs (DARA) sent a letter dated April 29, 2019 to the parties, including a copy of the petitioner's request, offering them the opportunity to submit any additional information or argument for the Commission to consider in this matter. However, the letter was initially sent to the Division of Gaming Enforcement instead of the appointing authority for the Department of Law and Public Safety. Therefore, the letter was resent June 19, 2019 so as to notify the appointing authority at the Office of the Attorney General as well. The Office of the Attorney General requested a two-week extension to reply, which was granted. The petitioner objected to this request and action, stating that the appointing authority had been properly notified that it had 20 days to respond, and he was penalized by the delay. He cited *N.J.A.C. 4A:2-1.3*, and argued that no reason why a delay was necessary was provided. Subsequently, on July 19, 2019, the appointing authority responded, stating that it supported the original effective date, could not speak to events that did or did not occur, and that it sent the appeal to the Commission upon receipt. The petitioner replied that the appointing authority's response was untimely as it was properly notified, and the response did not adhere to the 20 day time frame initially given. He argues that the Office of the Attorney General was properly notified as the Division of Gaming Enforcement is under its supervision. He maintains that the request for extension was made without giving a reason, and therefore there was no good and sufficient reason. He requests that the response be "stricken from the record."

CONCLUSION

N.J.A.C. 4A:3-3.9(c)3 states that the supervisor and program manager/division director shall complete their portions of a PCQ and provide their signatures on the form in accordance within 15 days of the employee's submission of the appeal to the immediate supervisor. By no later than the end of this period, the program manager/division director shall submit to the agency representative the completed questionnaire.

N.J.A.C. 4A:3-3.9(c)7 states that the agency representative shall review the appeal, affix to it an organizational chart, and ensure that the required information has been included and within 10 days of receipt of the appeal, the agency representative shall either notify the appellant that specific additional information is required, or forward the appeal with organizational chart to the appropriate representative of the Civil Service Commission.

N.J.A.C. 4A:3-3.9(e)3i, states that the effective date of a reclassification action in State service should be the pay period immediately after 14 days from the date the

Commission received the appeal or reclassification request, or at such earlier date as directed by the Commission.

In the instant matter, the petitioner filed for a classification review and submitted his PCQ to his immediate supervisor on November 21, 2017. The supervisor signed it and forwarded the PCQ to the Director in December, and the appeal was apparently lost thereafter, and not received by the appointing authority. Although provided the opportunity, the appointing authority did not rebut the petitioner's assertion that he saw his Director sign the PCQ on December 22, 2017, or that it was given to clerical staff for processing on that same date, to be hand delivered from the petitioner's Atlantic City office to the Department of Law and Safety's central office in Trenton. Given that the PCQ appears to have simply went missing between the Director's office and the personnel office in Trenton, and there is no evidence that the petitioner's Deputy Attorney General 3 duties were removed, there is a basis to grant an earlier effective date for the petitioner. Pursuant to *N.J.A.C. 4A:3-3.9(c)3*, the appeal should have been forwarded to the Human Resources office no later than December 6, 2017. Then, absent any additional information that may have been required, the appeal should have been forwarded to Agency Services by December 16, 2017.

However, it is noted that the petitioner has not yet received an appointment to Deputy Attorney General 3 and the appointing authority has the option to remove higher level duties from a position. This appears to be administrative oversight and given the correct timeline, pursuant to *N.J.A.C. 4A:3-3.9(e)3i*, the effective date of the appointment to Deputy Attorney General 3 should be changed to January 6, 2018, and the petitioner should receive differential back pay from January 6, 2018 to the date on which higher level duties were removed. Further, his official record should be changed to reflect the higher appointment from January 6, 2018 to that date. If those duties have not been removed, the official record should be changed to reflect the petitioner's appointment as a Deputy Attorney General 3 on January 6, 2018 and he should receive differential back pay from January 6, 2018 forward.

Regarding the extension given to the appointing authority to reply, it is noted that *N.J.A.C. 4A:2-1.3* does not apply, and a written record appeal is not a proceeding. There is no statutory or regulatory timeline in processing a written record appeal, no adjournments, and no scheduled dates for the appeals to be considered. Timelines are created by staff to allow for as full and complete a record as possible, and creating a record is not regulatory. Accordingly, staff routinely grants reasonable extensions of time to allow the completion of the record. Regardless, even if striking, there is no difference in the outcome of this appeal as the appointing authority merely agreed to the original effective date, and the Commission makes the final determination, not the appointing authority. See *N.J.A.C. 4A:3-3.9(e)4* and *N.J.A.C. 4A:1-2.1*.

ORDER

Therefore, the effective date of the appointment of Michael Golub to Deputy Attorney General 3 is properly determined as January 6, 2018 and he should receive differential back pay from January 6, 2018 to the current date, or to the date that higher level duties were removed. Further, the official record should be changed to reflect this order.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 14th DAY OF AUGUST, 2019



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